

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

**FRANK WADE JOHNSON
AND DELCINE JOHNSON**

Plaintiffs

VS.

UNITED STATES OF AMERICA

Defendant

NO. _____

ORIGINAL COMPLAINT

COMES NOW, FRANK WADE JOHNSON and DELCINE JOHNSON, (hereinafter referred to as the “Taxpayers” or “Johnson & Pace”) by and through the undersigned counsel, and file this Original Complaint against the United States of America, alleging as follows:

PARTIES

1. Plaintiffs, Frank Wade Johnson and Delcine Johnson are married individuals with a mailing address of 2 Meadowchase Trail, Longview, TX 75605. Frank Wade Johnson's taxpayer identification number is XXX-XX-1803. Delcine Johnson's taxpayer identification number is XXX-XX-8539. The returns for the period involved (tax year 2016), were filed with the Office of the Internal Revenue Service in Longview, Texas.

2. Johnson & Pace, Inc. is an S-Corporation with its principal place of business located in Longview, TX. The company is organized under the laws of Texas and operates in the United States with its principal office in Longview, Texas. As with all S-Corporations, tax liability is assessed at the shareholder level, meaning that tax liability passes through the corporation onto the

shareholder(s). Johnson & Pace, Inc. has a Taxpayer Identification Number of 75-2796741.

3. Defendant is the United States of America (hereinafter sometimes referred to as “Defendant” or “Government”) and may be served by mailing two copies of this Original Complaint by certified mail to Damien Diggs, United States Attorney for the Eastern District of Texas, at 211 West Ferguson Street Room 106, Tyler, Texas 75702; and mailing two copies of this Original Complaint by certified mail to Merrick B. Garland, Attorney General of the United States, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001.

JURISDICTION AND VENUE

4. This civil action is against the United States of America for a refund of amounts paid to the Internal Revenue Service under 26 United States Code § 7422.

5. This Court has jurisdiction pursuant to 28 United States Code §§ 1340 and 1346, and venue is proper under 28 United States Code § 1402.

BACKGROUND

6. This is an action arising under the Internal Revenue Code of 1986, as amended and codified in Title 26 of the United States Code, for recovery of \$158,517 in federal income taxes paid and collected from Plaintiffs by Defendant for Plaintiffs’ Tax Year ending December 31, 2016 (“tax year 2016”), plus interest thereon as provided by law.

ISSUES

A. TAXPAYER’S CLAIM FOR REFUND WAS TIMELY FILED

7. Plaintiffs had a deadline to file an amended date for the 2016 return October 12, 2020.

8. October 12, 2020, was Columbus Day, a federal holiday, making the due date October 13, 2020.

9. Under 26 United States Code § 6511(a), a taxpayer has three years from the day of filing

the amended tax return to file suit.

10. On October 12, 2021, Defendant denied Plaintiffs' claim for a refund. Defendant alleged in their denial that the amended return on which the refund was claimed was not timely filed.

11. To date, Plaintiffs have still not received their requested refund, making the filing of this suit necessary.

CAUSE OF ACTION

12. Plaintiffs hereby incorporate and allege, as if fully stated herein, each of the allegations of Paragraphs 1 through 11 above.

13. On or before October 13, 2020, Plaintiffs filed with the I.R.S. an amended federal income tax return asserting a claim for refund for taxable year ending December 31, 2016 in the amount of \$158,517.

14. On October 12, 2021, the I.R.S. erroneously disallowed Plaintiff's claim for refund as untimely filed.

15. To date, the timely filed claim for tax refund has not been paid.

PRAYER

WHEREFORE, Plaintiffs, Frank Wade Johnson and Delcine Johnson, pray for judgment against Defendant, the United States of America, in the amount of \$158,517 or such greater amount as determined to be allowed by law, plus interest, and costs allowed by law, and for such other and further relief as the Court may deem proper.

Respectfully submitted,

/s/ Jacob S. Langley

JACOB S. LANGLEY.

ZERBE, FINGERET, FRANK

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